

ISLAMIC PERSPECTIVE OF GOVERNANCE AND JUDICIARY: A LITERATURE REVIEW

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ABSTRACT

The aim of this research is to accumulate the literature related to an Islamic ideology for two of the basic components of a State, Governance and Judiciary; both have a strong impact on society. Pakistan is an Islamic ideological state, the only Islamic rule created on the name of religion after the state established by the Prophet Muhammad (Peace be Upon Him) in Medina. Its constitution and the style of governance should have its foundation based upon the principles of Islam; this is the main concept behind the creation of "Islamic Republic of Pakistan". The paper will review some of the basic requirements for an administrative system to be qualified as Islamic way of governance and the judicial system in Islam includes the formulation of a comprehensive ideology of human equality and justice; the creation of a powerful incentive to adopt this ideology; and to establish a living example of equality and justice at all levels of life by defining the Islamic Judicial System & Its Legal Basis. Different Quranic verses, sayings and acts of Muslim jurists in this perspective are also studied. The paper has literature review in two major parts, first we will cover governance and Islam along with some basic terminologies from Islamic point of view and in the later part Judiciary, the concept of Justice and Judicial system in Islam will be discussed.

Keywords: Islamic way of Governance, Islamic Administrative system, Judiciary in Islam, Judicial Independence in Islam.

I. AN ISLAMIC VIEW OF GOVERNANCE

The most important part of both democracies and authoritarian systems of the state is the Governance. Researchers conclude that the governance is the key components even in the authoritarian form of government, if it delivers its best and work properly for the betterment of the public than it is better than any other form of governance. However, in my opinion the authoritative form of government is not the need and cannot be justified in any case. The above statement is provided here only to emphasize the importance of governance.

The question arises here is that can religion play any part in delivering governance, whether it is Islam or any other? If the answer is "yes" then what is the role of the religion? Most of the people think that, "religion is not only a matter of belief", but is also concerned with the world hereafter. To believe in God, rituals and doctrine, all relate themselves to the other world. On the other hand, religion also holds views that

are irrelevant to the world. Another view point is, the religion is a complete system of lifecycle and it provides framework for this worldly life. Religion aims to mold upright ethical and moral character which leads a successful life to the extent it is expected that it will also lead to matter of good governance, and thus the goodness is rewarded and evil will be punished. One could not live a successful moral life if his basic requirements are not satisfied. So, for enhanced quality of life and enriching spiritual life good governance is necessary.

If the people who govern the state, possess ethical values and practices their religion, they have more chances of improved the quality of governance. Like in Buddhism there is a concept of (*dukkha*) which suggests that “compassion and eliminating suffering” or commonly translated as “suffering”, “pain” or “un-satisfactoriness”. Thus, a practicing Buddhist could govern in such way that it will trim down or may eliminate distress of the people he/she governs. Similarly, a person who follows Jainism, “a religion against the teachings of orthodox Brahmanism”, would be seriously concerned with eliminating violence from people’s life. Moreover, the practice of bad governance would result in increasing violent behavior in the society. A good Christian will make every effort through governance to promote peace, love and harmony in the society.

The values taught in the religion could be supportive in cultivating the quality of the governance. Life is not an ideal phenomenon. There exists a continuous strain between personal and ideal interest. If human conduct is determined by ideals alone, this world would have been a heaven like the Kingdom of God would have descended on earth.

Human behavior is by far the most complex to govern. Political, economic and social factors play their particular roles in shaping the role of an individual, no one can live in isolation. They are under influence from all sides, even when someone aims to be truthful and honest, he finds it difficult to be so. But most of the humans easily give into demands of flesh and could not resist offer of worldly things of life. The people who governs have the powers to realize what people want, often find it more tempting to yield to pressure of their desire.

Accordingly, corruption can be found even in “religious establishments”, that are principally established to counter evil in life and to control desire. To control one’s desire is greatest *Jihad* in life in Islam, and without controlling its desire, a governor can’t deliver. It is the greatest challenge for a person to resist against the desires and also practice the principles of his religion or political ideology. Such religious guidelines can play a part in improving our governance. This is not a matter of concern here that in a society of numerous beliefs and principles that are different from each other, or beliefs that is not accepted by other. The thing which is mainly focused here are values and not the beliefs. In societies, the laws often violated but we still need these laws. Similarly, the religious teachings are often ignored but such teaching was still required for continuous struggle to improve our behavior. This chapter is more concerned with the Islamic point of view about the governance and

Judiciary as we are within the domain of “Islamic Republic Pakistan”. Does the religion Islam concern itself with governance? And what are the rules and teaching for free, fair and just society in Islam.

Islam teaches to create balance among the life of this world and the hereafter. Islam also urges its followers to possess morality in this life on earth and also prepare for the life after death through good deeds and worship according to its teaching.

For Muslims Quran is the ultimate and the only vital source for the survival, a true guide for the entire life and its affairs. “In Quran Allah stresses on cooperation on goodness and the avoidance of evil and forbids humans to accomplice each other in sin and aggression” (Responsible Leadership: Global and Contextual Ethical Perspectives, 2007).

From the Holy Quran, it is obvious that good governance depends upon peoples’ cooperation in good deeds and avoidance of sinful acts and refrain and aggression. The Quran likewise makes it a responsibility of each individual to enforce what is good and contain what is evil (Quran 3:110). Therefore, people have to involve themselves in promoting goodness and containing evil all the time.

People themselves are much part of good governance. It is Impossible to deliver good governance without the help of the governed. According to Islam every believer should enforce good and contain evils in the society irrespective of his status. According to the Quran “No one can enjoy higher status than any other except by doing good deeds. One closest to Allah is one who is most pious” (Quran 49:13).

Following are some of the basic requirement for an administrative system to be qualified as Islamic way of governance.

✓ **Justice:**

The Governance in Islam is charged with serious responsibility. The Prophet (Peace Be Upon Him) provided the greatest model of a good governance. The Prophet (Peace Be Upon Him) lived an exemplary life. He never did an undue and unjust favored to his closest people and relative, never misused his powers. Once someone came with reference to forgive a lady thief name “Fatima” from punishment, the Prophet (Peace Be Upon Him) became angry and said “even if my daughter Fatima had committed theft, he would not have spared her.”

It would be assessed that the deterioration of governance starts when one is not fair in providing justice to all the society and favor a small group of people. Every criminal whether he/she is close relative should not be spared. The Quran lays down very comprehensive standard of justice. In Islam justice holds central value. One of Allah’s names is “Adil” which means (just). Justice is most fundamental to good governance.

The Quran says, “0 you who believe, be upright for Allah, bearers of witness with justice; and let the hatred of a people incite you not to act justly. Be just that is nearer

to observance of duty. And keep your duty to Allah. Surely Allah is aware of what you do?" (Quran 5:8).

These Quranic orders should be implemented on all. When governor and governed seek for justice they should be treated equally. For a person who governs, hatred of the people should not provoke him to act unjust. Accordingly, hostility should not be permitted to commit an act of injustice.

The additional obstacle that restricts good governance is prejudice against people not from the same religion, caste or community. The community enjoys the shower of the favor provided by their own community members. These acts are legitimized in a variety of ways, at times in the name of merit and efficiency or sometimes in the name of create or cast.

The Prophet Muhammad (Peace Be Upon Him) was a highly just ruler. The opposite of justice mentioned in Quran is oppression which contextual meaning is wrong doing and darkness. If the society is run by an unjust ruler it always leads to darkness of exploitation and oppression. The Quran says "Allah is Friend of believers and brings them out of darkness into light" (Quran 2:257). Thus, the order of Islam and Quran should be upheld so that we create an environment which provide liberates to humanity and a hope of light and from darkness. It is the supreme obligation on a head of state to create order and justice in societies.

✓ **Equality:**

Islam also believes in the equality of all human beings. The concept of equality in Islam is called "Musawat". The Quran says that "all children of Adam have equal honor" (Quran 17:70).

Nobody can deny nobility of people given by Allah, their creator. A ruler must guarantee the dignity and honor to all the individuals of the society. There should not be any distinction between the individuals based on their color, race, language and the nationality. The Quran describes these differences as the sign of Allah. Thus, there is no discrimination at all in the governance system of Islam.

✓ **Freedom of conscience:**

Fearless criticism on rulers and complete freedom of conscience is a great need of all time. The Prophet (Peace Be Upon Him) says that "the best form of jihad (afzaai-jihad) is telling truth on the face of a tyrant ruler" (Musnad Ahmad 18449). If the citizens are stopped to criticize their rulers without fear, the rulers become more exploitative. Only democracy is considered as a governance system other than Islam which provides the right to criticize to the public as compare to authoritative system of governance. Hence, according to the Prophet's above hadith it can be said that a democratic regime is more near to Islamic as compare to an authoritative regime.

After the Prophet (Peace Be Upon Him) the Khilafat period of first four rightly guided Caliphs ruled echoed some of these Quranic values and the teaching of Prophet (Peace Be Upon Him). The first Caliph Abu Bakr (may Allah have mercy on

him) said, while assuming office, “0 people! Behold me charged with the cares of Government. I am not the best among you; I need all your advice and all your help. If I do well, support me; if I commit mistake, counsel me” (Ali , Islam misgivings and History, 2008).

He also said, “To tell the truth to a person commissioned to rule is faithful allegiance; to conceal it, is treason. In my sight, the powerful and the weak are alike; and to both I wish to render justice. As I obey Allah and His Prophet obey me; if I neglect the laws of Allah and the Prophet, I have no more right to your obedience” (Ali , Islam misgivings and History, 2008).

The statement above by Hazrat Abu Bakr (may Allah have mercy on him), summarized the Islamic viewpoint of governance. The key elements of this philosophy are;

- i. Ruler should be advised by the people and help ruler to discharge his/her duties;
- ii. The governor should be supported if he works well, and if he goes wrong do counsel him/her;
- iii. It is the ruler's duty to tell the truth and to fulfill and remain hushed when he / she is wrong and proved the disloyalty;
- iv. The powerful and the weak must be equal in the eyes of the state and do justice to their purpose and
- v. If the ruler follows Allah and the Prophet's instructions, we must follow Him, and if He / She go against them, he / she will not be entitled to the obedience of the peoples.

(Sources of Islamic Law and sources of Law in Pre Mughal Period and Mughal Period, 2013);

Thus, honest governance is not possible without fearless criticism of unjust ruler. Both ruled and the ruler dishonored this principle the result was oppressive statute and extensive injustice in the humanity.

✓ Shared responsibility:

The Quran commands the Prophet, “...and consult them (i.e. those around you) in (important) matters” (Quran 3:159). An Egyptian scholar Dr. Taha Husain concludes from this verse that “Muhammad (Peace Be Upon Him) did not found a theocratic state as the Prophet has been commanded to consult people around him in important matters” (Husain, 2006). According to Dr. Husain, “nothing could be more misleading than the concept that the state founded by the Prophet was a theocratic state” (Husain, 2006).

Dr. Husain conclude, “Islam after all, is a religion which lays emphasis on the oneness of Allah, prophet hood (of Muhammad) and then on righteous living. Islam also draw attention towards this and the other-worldly life but it did not deprive human beings of their freedom and it (Islam) did not become an absolute master of man nor did it suspend his initiative to act; it, on the other hand, made him the master

within certain limits. It showed what was desirable and what was repulsive and, of course, it laid emphasis on reason and gave freedom (with the help of reason) to think what was good to the extent possible" (Husain, 2006). Allah commanded the Prophet (Peace Be Upon Him) to consul the faithful in (their) affairs. It is understandable from above discussion that "If everything had to be decided in the heavens, there was no need to consult anyone" (Ali, Governance And Religion - An Islamic Point Of View, 2006).

The Quran create a balance between Allah and the human freedom according to their needs within the limits defined by Allah. Therefore, the influence of these limits can be avoided by the governor. The ignorance of these hudud by any governor will lead to chaos and anarchy in the society.

✓ **Weaker sections:**

Based on Hudud defined by Quranic, governance has a boundless responsibility towards the citizen rights includes poor, orphans and widowed the weaker section of society which were totally neglected in the pre-Islamic era of Mecca. Thus, Islam condemns those who neglects weaker people of the society.

Quran also upholds that, the struggle between those who are powerful and those who are weak is everlasting and that Allah is on the side of the weak. In Quran Allah doesn't like any governance that is biased in favor of powerful and conceited sections of society and doesn't include weaker fragments in governing and leading the society invites the wrath of Allah. Islam stresses on balance and this same goes in leadership and governance too.

When we see governance in today's world in general and especially in Islam, people violates the basic code of the Quran and teaching of Prophet Mohammad (Peace Be Upon Him). Over the centuries, most of the time people were passive and not raise their voices. That is why we lack the true democratic system in the Islamic world. In general, it is claimed that Islam's democracy is rather seriously suits to its teachings, nothing further removed from the truth.

If the meaning of democracy is the participation of people in governance, then Islam is the first religion to emphasize on that. Here, too, it is emphasized in the Islamic Doctrine; "Tell the truth in the face of tyrant rulers". Imam Ghazali (Allah be merciful to him) even argues that it is forbidden to see the face of tyrant ruler. The Quran strongly favors the weaker portions of society and make justice an inevitable fragment of the behavior of the faithful.

Democracy is the transparency and openness of the administration, people to participate in decision-making and above all justice. In addition, the focus is on democratic governance in favor of freedom, human rights and human dignity. No significant democracy can function without honor human rights and freedom of expression. The Quran not only accepts the dignity of man and shows it, "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We

have created, with [definite] preference" (Quran 17: 70). It is true that the Muslim leaders have not practiced these basic principles through the history of Islamic rule, and instead of a very authoritarian rule began to evolve from the period of the Umayyad.

✓ **Gender justice:**

Today governance is impossible lacking the notion of gender equality and the empowerment of women. It must be admitted that the Islamic world is far behind in this context as far as women of mass level is concern, some progress has been made in 21st century. The Islamic World inclines to be very male-controlled and give serious reservations to women who participate in higher offices in governments, which are very few in numbers. Men oppress women and it is very ironic they do it in the name of the Quran.

The Quran, the power of women who give them in the history of humanity, The same dignity of men. How can we seriously claim the women are secondary measures in Islam? Following verses from Sūrat 1-Aḥzāb will support the above argument regarding Quranic comprehensive approach for gender equality, "Indeed, the Muslim men and Muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the patient men and patient women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women, the men who guard their private parts and the women who do so, and the men who remember Allah often and the women who do so - for them Allah has prepared forgiveness and a great reward" (Quran 33:35).

For fair governance, the justice with women must be ranked as top priority over the other age-old traditions. Quran highly emphasized on justice, but unfortunately, given the social tradition many of the shariah laws never assumed the importance over justice that is fundamental to the teaching of Quran. According to Quran the justice should be provided to the weaker section of the society and the women also considered as weak in the societies we live. Quran gives the entire set of guidelines for women in its "Sūrat an-Nisā", means "The Women", it is the fourth chapter, with 176 verses. The title of the surah is itself explaining the content of the chapter and the importance of women in Islam. In this chapter Allah emphasizing on equality and says, "And do not wish for that by which Allah has made some of you exceed others. For men, is a share of what they have earned and for women, is a share of what they have earned. And ask Allah of his bounty. Indeed, Allah is ever, of all things, Knowing" (Quran 4:32).

Finally, from the discussion in the above section it is concluded religion has strong impact on the matter of governance. Our religious leaders and scholars insist on the tradition set by us instead of the teaching and values of Quran. The tradition may vary over time and time bound but the values are everlasting. Hence, the values are more important than traditions. Regrettably, the Islamic world more emphasize on

tradition than values. So, it is the responsibility of the modern Muslim scholars to play a constructive role by enhancing the role of values and criticizing the traditions. Similarly, those traditions that are not contradictory with values can be kept, while other should be rejected. In this technological fast pace moving information world, there is not any single regime, which disproves basic human rights and freedom of speech, mainly the one which is based on Quranic values. The earlier we change the better it is. Islam could and should play an important role in developing good governance in the Muslim world.

II. THE JUDICIAL SYSTEM IN ISLAM

“O, you who believe! Stand out firmly for justice...” (Quran 4:135).

The contribution of Islam in this respect can be divided into three categories:

- ✓ The formulation of a comprehensive ideology of human equality and justice;
- ✓ The creation of a powerful incentive to adopt this ideology; and
- ✓ To establish a living example of equality and justice at all levels of life

In Holy Quran, we can find the importance and necessity for the existence of judge. The values and balance of a society starts deteriorating once elites of a country desire for more and more wealth, wants more of the privileges and power to control which gives rise to the prevailing corruption leading towards the complete disaster of the social and welfare of society by collapsing the wheel of economy. This is where the need of judge comes into play where the law makers are required to bring again the balance in society.

Allah says: “We have sent Messengers with clear proofs, and sent down with them the Scripture and the Balance that mankind can establish justice...” (Quran 57:25)

Allah choose the religion Islam for the whole mankind since the time Allah sent the last Prophet Muhammad (Peace Be Upon Him), He showed great concerns for the system of judiciary and also for those which are appointed to carry out judicial responsibilities. Islam proposes for it many legal commands. Islam is the religion that comes to remove people from immorality, oppression and bring them to the highest level of human freedom and justice.

“Allah’s messenger (Peace Be Upon Him), was the greatest of all judges and in the first Islamic state of Medina he used to act in the capacity of judge” (Al-Muala , 2006). The Prophet also used to hire people as judges in other different cities. In Caliphs era, sitting head of state is the who appoint judges manage their affairs in order to shield their independence, the governors and other political appointees, even the caliph have to obey the judge's decision. The second caliph, Umar bin al-Khattab (RA), was the first person who made a judge an independent person and separated it from the Caliph and Governor.

✓ The Chief Justice in Islam:

Throughout the Islamic era, the judicial system continued to evolve throughout the “Umayyad era” and also well in the “Abbasid Era”. These eras marked the physical

existence of the office of Chief Justice. The removal and appointment of government official becomes the responsibility of the Chief Justice. Justice Abu Yusuf was the first person appointed on this post, he is the student of renowned Jurist Imam Abu Hanifah (may Allah have mercy on them). Afterwards, such system spread throughout the Muslim world and continued until the fall of Ottoman Empire (Al-Muala , 2006). As we are discussing the Islamic Judicial system in this section, it should be mentioned that Islam has provided basic principles and broad guidelines related to the all affairs of life. This is the reason why such details are still relevant with current issues of this time and place. Establishing the justice among the people is an obligation which must be carried out is one of the guideline of Islam. The responsibility has transferred to population of each generation how they deal with it in the most suited way in the circumstances they face. They are abided by only one condition that the methods they choose to deal with the issue must not be contrary to the guidelines provided by Islam.

✓ **Defining the Islamic Judicial System & Its Legal Basis:**

Islam has provided the judicial system that settles disputes between people in accordance with the Divine Laws and commands that were taken from the Quran and teachings of Prophet (Peace Be Upon Him).

It is a fact that all of the Messengers of Allah (may the peace and blessings of Allah be upon them) acted as judges. Allah says: “And remember David and Solomon, when they gave judgment concerning the field when people’s sheep had browsed therein at night, and We were witness to their judgment. And We made Solomon to understand the case. And to each of them We gave good judgment and knowledge” (Quran 21:78-79).

Allah also says: “O Dawood (David)! Verily! We have placed you as a successor on earth, so judge between people in truth (and justice) and follow not your desire for it will mislead you from the Path of Allah. Verily! those who lost from the Path of Allah have a severe torment, because they forgot the Day of Reckoning” (Quran 38:026).

At multiple places in Holy Quran we can find that Allah also ordered His Prophet Muhammad (PBUH), to be fair and just while taking decisions for disputes. Allah asked His Prophet to communicate to people a message of justice and fairness through his acts and hence invite people towards Islam.

For instance, Allah says, “So judge (O Muhammad) between them by what God has revealed and do not follow their vain desires, but beware of them lest they turn you away from some of what Allah has sent down to you” (Quran 5:49).

Allah also says: “...And if you judge (O Muhammad), judge between them with justice. Verily, Allah loves those who act justly” (Quran 5:42).

Allah also says in Quran, “But no, by your Lord, they shall have no faith until they make you (O Muhammad) judge in all their disputes and find in themselves no resistance against your decisions and accept them with full submission”.

(Quran4:65).

The legal basis of Islamic judicial can also be found in Sunnah. A hadith related by Amr bin Al-As (may Allah be pleased with him) that the Prophet (peace be upon him) said: "If a judge gives a judgment using his best judgment and is correct, then he receives a double reward (from Allah). If he uses his best judgment but makes a mistake then he receives a single reward" (Sahih Bukhari 6919, Sahih Muslim 1716). Prophet Muhammad (PBUH) another place said: "You should not wish to be like other people, except in two cases: a man who Allah has given wealth and he spends it on Truth and another who Allah has granted wisdom and he gives verdicts on its basis and teaches others" (Sahih Bukhari, Sahih Muslim).

Many Muslim scholars have strong consensus on the legal status of Islamic Judicial system. Ibn Qudamah (may Allah have mercy on him) says; "The Muslims are unanimously agreed that a judicial system must be established for the people" (Al-Muala , 2006). Imam Ahmad (may Allah have mercy on him), one of the great and well-known scholars of Islam said; "People have to have a judicial authority or their rights will disappear" (Al-Muala , 2006).

✓ **The Major Attributes of a Judge in Islam:**

The appointment of judges in Islam is an obligation on the basis of the following juristic principles; "Whatever is needed for a legal obligation to be carried out is also obligatory" (Al-Muala , 2006).

The Islam has provided the criteria for qualification as a judge to perform the duties. These qualifications are as follows:

- i. **Maturity:** A minor (non-adult) cannot be appointed as a judge and if appointed, then there are no bindings to obey his decisions. Allah's messenger (Peace Be Upon Him) has ordered his followers to seek refuge from the rule of children. Refuge is only from harmful things therefore appointment children to official posts like judge is a harmful practice. In addition, a minor does not have the due allowance for himself, so as how he can be given authority over others for this matter to be appointed to the post of judge or another official post.
- ii. **Qualification:** A judge must have a sound mind and body, also deeply insightful and possess opinions of high quality. The judge must fulfill all the other qualifications that are and be at least past the age of maturity, even if he is very young. But being an older judge is desirables because it increases the self-esteem and status of the judge. These are the desirable traits for a judge that a jurist must consider.
- iii. **Sanity:** A judge should be mentally fit and work with utilizing all its senses. It is not allowed that an insane or mentally challenged individual person

would hold such an important position of judge. Similarly, a person, who has become impaired or weakened due the age factor or sickness, is not allowed to work as judge. This qualification can be compared with the qualification of maturity, to some extent, it is more important as compared to the age. The decision of such a judge was not bounded to be obeyed. The judge should possess enough intelligence to clearly see the difficult situations and have the ability to solve problems.

- iv. **Freedom:** A judge must have full freedom to perform his duties. He ought not be a slave in any context. If such a person designated by the court, its decisions are not binding. As slave doesn't possess complete custody, so he must not be put in a position of authority over the affairs of others. A fair judge should be honest, physically and mentally should be free from slavery. As it is a matter of prestige for him and his position to work for the interest of common people and not become a slave for criminals and deviants of society.
- v. **Upright Character:** According to most of the jurists this is prerequisite for every public oriented position of binding legal authority. A judge should perform all the religious and moral duties obligatory on him, he must be honest, must have ostensible integrity, he must be free from sinful and immoral behavior, keep himself away from doubtful actions, follow the social norms, and he must be renowned as a model of good behavior in both worldly and religious concerns. The appointment of an immoral individual on a judicial post is not permissible, because as a judge trust is the only thing that a person can be given.
- vi. **The Capacity for Independent Juristic Reasoning:** A judge must be able to find the legislation on general and specific issues in the light of teaching of Quran and Prophet (Peace Be Upon Him) i.e. Sunnah for that a judge must have appropriate knowledge of all. He should refer the texts from where he can clarify the ambiguous issues. The judge must also possess skills to differentiate between repealed rulings and the texts that repeal them. He should know that which portions of the Sunnah have unchallenged validity and have the ability to distinguish between chains of narration and the quality of the narrators. As Quran is the main source of guidance and it is in Arabic, he must have strong grip on the Arabic language and its grammar. The arbitrator must have a sound knowledge of matters of agreement and disagreement from perspective of Islamic Law as they were in times of the Prophet's Companions and onwards.

vii. **Full sensory perception:** All the senses of the judge must be working properly like he can hear, see and speak correctly. For most of the Islamic scholars, it is necessary condition for the qualification for appointment of judge. A person could not be appointed as a judge who is deaf, because he could not be able to hear the people when they speak. Similarly, a blind person could not be appointed, since he cannot separate the complainant from the offender by sight, nor the one confessing, nor the eye witness from the one being witnessed. A person cannot be appointed who can't speak, because he could not pronounce decision and majority of people would not understand his language of sign.

✓ **A Judge's Behavior and Conduct in Islam**

For the acceptance of judge by the public, a general rule is that he should be good in his behavior and conduct with other people, and should not provide any sort of occasion to the public to doubt his truthfulness and independence.

The jurist mentioned the following things that a judge must possess;

- i. **He is not allowed to engage in business:** The great jurist Al-Shafi'i said; "It is disliked for him (i.e. the judge) to engage in buying and selling, because it is feared that he will receive unfair advantages or excess" (The Judicial System in Islam, 1999). If a judge is involved in any type of business, then no surety can be given that he will not receive any favor and conducts from some people, which may be indirectly influence him to give special treatment to those people at the time of judgment. Similar to this all other forms of commercial connections of judge should be measured in the identical light as business i.e. buying and selling.
- ii. **He is not allowed to accept gifts:** A judge should never accept any type of gifts from any of the complainants, as this puts him under doubt of biasness. In truth, for a judge it is disliked to receive a gift from someone, whether he/she be a complainant or not. When Umar bin Abu-al-Aziz (may Allah have mercy on him) refused to accept a gift, it was said to him, "The Prophet (peace be upon him) used to accept gifts." At this, Umar (may Allah have mercy on him) said; "the Prophet (peace be upon him) was divinely protected from error, so what is feared from others who receive gifts was not feared from him" (Judicial Rights & Duties, 2009). Benefit in any form that a judge could receive from any person, under his authority should be consider same way as gifts.
- iii. **He should not involve in any socially and culturally unacceptable behavior:** A judge must be worthy, esteemed and avoid things that could harm its standing and reputation, or be inappropriate for a judge to engage. He

must not socialize himself too much with others. This defends a judge from being affected by them, which may affect its neutrality. Similarly, he should go only into the public meetings where his presence is appropriate.

iv. **He should maintain serious behavior and dignity:** A judge should avoid making jokes and making other people laugh, if he is in their company or they in his. Such acts will weaken his dignity and respected status that an individual required to have as a judge. Also, when he speaks, he must keep the highest standards of speech possible, free from all sorts of errors and flaws. It should also avoid to make fun of others.

The appointment of a judge should be made by the highest official authority or by the legislatorial appointed representative body. This helps in preserving the harmony among the masses and avoids civil conflict. There is no doubt that judicial post is one of the highest official post and a judge should be appointed by highest political authority except in some justifying conditions. Like, if in a certain specific area political authority does not exist then is the choice of the people of that area to appoint a person as judge to solve their disputes. But as a political authority take charge in the area, then it is compulsory for them to appoint the judge to hold the post.

A judicial post can exercise a controlled authority. It is possible for a judge to have jurisdiction over the strata of all the masses and over all types of cases. The political power is allowed to assign a judge to a specific area or limit his dominion to a certain type of case. In either situation, the judge will not be allowed to chair cases other than his specialty or areas. This type of limits can be based on type of case, locality or time.

✓ **The Independence of the Judiciary and Islam**

The basic teaching of Islamic laws restricts the governing officials to interfere or influence the court decisions though any means or ways. Islamic Law prohibits the governing officers from influencing or interfering with the decisions of the court. Islamic laws and principles generally and in individual statutes pursues to apprehend its principal objective of establishing justice on the basis of “monotheism” which means “to believe in only one God (ALLAH)”.

The Monotheism is not only lip service, but it is realized through acts that verify the living of faith. The actions of a Muslim should reflect that they follow the commandments of Allah, this is also the responsibility of a Muslim society as a whole.

It also requires that the prohibitions and commands given by Allah should be applied as the standards of fairness and truth. It is the firm belief of a Muslim Whatever Allah has commanded in Quran is justice and truth, whatever Allah has forbidden is falsehood and oppression.

To command justice and prohibit oppression, Allah says in the Quran;

“Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded” (Quran 16:90).

Another place in Holy Quran Allah says; “O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do” (Quran 5:8).

Allah says to His Prophet Mohammad (Peace Be Upon Him);

“[They are] avid listeners to falsehood, devourers of [what is] unlawful. So, if they come to you, [O Muhammad], judge between them or turn away from them. And if you turn away from them – never will they harm you at all. And if you judge, judge between them with justice. Indeed, Allah loves those who act justly” (Quran 5:42).

In the hadith, Mohammad (Peace Be Upon Him) relates; "Allah says: 'O My servants, I have prohibited oppression upon myself and made it prohibited between you, so do not oppress one another" (Saheeh Al-Bukhari).

These are the few Holy texts of Quran and Hadith which emphasize the obligation that judge must provide justice with what All Mighty has revealed. This implies on both the person who governs and to the one who is governed. All powers in Islam is bound by Allah's Law. If the government, does not implement the Law given by Allah then their obedience in not bindings. It is the system religious ancestors acted upon Islamic law. The true ruler is Allah and the political leaders are only appointed to run the affairs of state. All Muslims are equal whether they are leaders or Caliph.

The Muslim political leaders in the past have the understanding of this justice that kept the heavens and the Earth right; these are basis for governing in Islam.

Amr bin Al-As (may Allah have mercy on him) said; "There is no political leadership without men. There are no men available without wealth. There can be no wealth without a prosperous civilization. Civilization cannot prosper without justice" (The Judicial System in Islam, 1999) Umar bin Abd al-Aziz (may Allah have mercy on him) wrote to one of his officials who required approval to fortify his city; "Its fortification is achieved through justice and through removing oppression from its streets" (Al-Muala , 2006).

One of the addresses in city of Homs Sa-id bin Suwayd (may Allah have mercy on him) said; "O people, Islam has an impenetrable wall with a secure gate. Its wall is the truth and its gate is justice. Islam will remain inviolable as long as the political authority is stern. This sternness is not by whip or sword but by judging with truth and applying justice" (The Judicial System in Islam, 1999)

A political leadership can interfere with the decision made by judge, it went further if other assurances to guarantee that the Judiciary would endure strong and independent character. A judge holds an important, serious and prominent status in the society, because a judge is the person who resolves the disputes between the people so he must receive respect and trust from the people. Such trust and respect will help in accepting the decision as just. Until the judge has a strong proof of his

good moral character he cannot achieve this public esteem.

According to majority of Muslim Jurist, it is not allowed by Islamic Law that the political authority removes any judge from his work unless it is in the favor of public. If there is any valid reason for the removal of judge like, appointing another person who is more qualified and eligible for the post. The appointment of a judge remains intact if the removal was made on invalid reason.

FINAL REMARKS

There are only few theoretical studies focusing the relationship between the judiciary and governance specifically within the domain of religion. Scholars, practitioners, media and politicians debate the question; what role the judiciary should play to be an instrumental agent to cater the challenges in implementing good governance in the light of a religion?

Pakistan being an Islamic ideological state must implement the Islamic perspective of the Governance and the Judiciary to lead as Good Governance. The literature proves that the Islamic principles like equality, timely justice, brotherhood, freedom of expression, accountability at all level, and service to humanity must be practiced by a Muslim state. There is a strong correlation between Good Governance with religion as religion is one of the strongest agents of social control especially in any Islamic state. The Islamic Judicial system must be as per the light of Quran and Sunnah. The literature review can be used as a conclusion that Islam covers all aspects of justice and judicial system. For example guidance can be seek about Chief Justice who has a significant role in Islamic Judicial system as well as in contemporary administrative system, the official must have upright character, dignity, properly qualified and must possess behavior and conduct as per Islamic parameters. The importance of these characteristics emphasizes the fact that Islam believes in fair, equal and independent judiciary.

Islam phobia can be seen in today's world and as a result of these fears Muslim Ummah are facing physical, emotional and mental attacks from all opponents and haters. We must try to follow the teachings and practices of Holy Quran and Sunnah to set examples throughout the globe. Islam is the religion of peace, sanity and equality. Islam is a complete, universal and concrete guidance for everyone and for those who are responsible to run the state's affairs.

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